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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/810,794	03/15/2001	Paul W. Romig	42445.00079	6786

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EXAMINER

GOFF II, JOHN L

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 12/05/2003

21

Please find below and/or attached an Office communication concerning this application or proceeding.

clo 21

Office Action Summary	Application No. 09/810,794	Applicant(s) ROMIG ET AL.	
	Examiner John L. Goff	Art Unit 1733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 11-18 and 24-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 11-18 and 24-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to Amendment D received on 9/25/03. In view of applicants amendment the previous rejections are withdrawn.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
4. Claims 1, 2, 6, 23, 25-27, and 30-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hart (GB 2205295) in view of DE 2105427.

Hart discloses a technique of labeling the external surface of a semi-permeable, pre-formed plastic container, e.g. a bottle, with a label having a metal base such that the label reduces or prevents the permeation of gases through that part of the surface of the container covered by the label, i.e. the metal base acts as a barrier to prevent passage therethrough of contaminants into or out of the container. Hart teaches a label comprising a metal base layer.

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Hart teaches the label may further comprise at least one other layer such as an outer printed layer (i.e. the printed layer is attached/coupled to the metal layer). Hart teaches the label may cover at least 50% of the external surface area of the container, i.e. the label covers an area of the external surface less than the external surface area so that a remainder of the external surface area is exposed. Hart further teaches attaching the label to the external surface of the container using any suitable method (Page 1, 10-13 and Page 2, lines 29-33, and Page 3, lines 1-6, 11-12, 15-23, and 28-30). It would have been obvious to one of ordinary skill in the art at the time the invention was made to directly attach the metal layer of the label taught by Hart to the external surface of the container using a conventional melt bonding technique, i.e. melting a portion of the external surface of the container sufficient to directly bond the metal base layer of the label to the container followed by cooling, as it was a well known and convention technique in the art to attach a metal layer directly to a plastic layer by melt bonding to form a bond with high bond strength while avoiding the use of an adhesive as shown for example by DE 2105427.

Regarding claims 25, 26, 31, and 32, it would have been obvious to one of ordinary skill in the art at the time the invention was made to determine the optimum melt bonding temperature as a function of the type of plastic bottle used such that during melt bonding the plastic bottle is not burned or deformed as doing so would have required nothing more than ordinary skill and routine experimentation.

Regarding claim 34, it is noted the metal base layer of the label taught by Hart is intrinsically capable of preventing contaminants (such as adhesive or ink) on the external surface of the metal label from contacting the external surface of the plastic bottle.

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DE 2105427 discloses a method for forming a plastic/metal laminate wherein a plastic layer is directly melt bonded to a metal layer to produce a laminate having high bond strength that is free of adhesive (See abstract).

5. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hart and DE 2105427 as applied to claims 1, 2, 6, 23, 25-27, and 30-34 above, and further in view of the admitted prior art.

Hart and DE 2105427 teach all of the limitations in claims 3-5 as applied above except for a specific teaching of all the different types of containers that may be labeled. It is noted Hart and DE 2105427 suggest a label and method for labeling a filled container, e.g. filled with foodstuffs, and they are not limited to any particular container. It would have been obvious to one of ordinary skill in the art at the time the invention was made to label containers such as pharmaceutical bottles (plastic bottles), IV bags and food packages (plastic bags), etc. using the label and method taught by Hart as modified by DE 2105427 as it was known in the art to label these types of containers as shown for example by the admitted prior art and only the expected results would be achieved.

The admitted prior art is directed to labeling containers wherein the containers include plastic bottles, pharmaceutical bottles, IV bags, food packages, etc. (Specification pages 1 and 2).

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hart and DE 2105427 as applied to claims 1, 2, 6, 23, 25-27, and 30-34 above, and further in view of Kelch et al. (U.S. Patent 6,042,930).

Hart and DE 2105427 teach all of the limitations in claim 7 as applied above except for a specific teaching of using a base layer of metallized polyester. However, it is noted Hart is not

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limited to any particular base layer only that the base layer is formed of a gas impermeable material. It would have been obvious to one of ordinary skill in the art at the time the invention was made would to use as the base layer taught by Hart as modified by DE 2105427 metallized polyester, i.e. Mylar, as this was a well known base layer material used in labels as shown for example by Kelch et al. and only the expected results would be achieved, i.e. the metallized polyester would give the label similar properties to that of a metal foil.

Kelch et al. are directed to heat-activated adhesive labels for use in labeling containers. Kelch et al. teach the base layer of labels may comprise oriented polyester such as Mylar (Column 2, lines 12-19 and 34-36 and Column 8, lines 21-22).

7. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hart and DE 2105427 as applied to claims 1, 2, 6, 23, 25-27, and 30-34 above, and further in view of Yoda et al. (U.S. Patent 3,961,009).

Hart and DE 2105427 teach all of the limitations in claim 24 as applied above except for a specific teaching of cooling the labeled container in a cooling bath. However, it would have been well within the purview of one of ordinary skill in the art at the time the invention was made to cool the labeled container taught by Hart as modified by DE 2105427 in a cooling bath or cooling in air as these were well known cooling alternatives in the art as shown for example by Yoda et al.

Yoda et al. are directed to extrusion shaping polymers to form heat resistant articles. Yoda et al. teach cooling the extruded articles using cooled air or a cooling bath (Column 6, lines 19-21).

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8. Claims 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hart and DE 2105427 as applied to claims 1, 2, 6, 23, 25-27, and 30-34 above, and further in view of Swierczek (U.S. Patent 5,024,014).

Hart and DE 2105427 teach all of the limitations in claims 28 and 29 as applied above except for a specific teaching of using a printed layer wherein a bonding agent is required to bond the printed layer to the base layer. One of ordinary skill in the art at the time the invention was made would have readily appreciated incorporating into Hart as modified by DE 2105427 a printed layer bonded to the base layer through a bonding agent to apply articles such as attached coasters to the container as suggested by Swierczek.

Swierczek is directed to label for use as a coaster. Swierczek teaches a label comprising an inner adhesive layer and an outer print layer. Swierczek teaches the label can be attached directly to the external surface of a container or the label can be placed over a conventional label on the container (Figures 1-6 and Column 2, lines 4-8, 14-16, and 50-54 and Column 3, lines 33-35).

9. Claims 11, 12, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hart (GB 2205295) in view of Yamanaka (U.S. Patent 5,254,302).

Hart discloses a technique of labeling the external surface of a semi-permeable, pre-formed plastic container, e.g. a bottle, with a label having a metal base such that the label reduces or prevents the permeation of gases through that part of the surface of the container covered by the label, i.e. the metal base acts as a barrier to prevent passage therethrough of contaminants into or out of the container. Hart teaches a label comprising a metal base layer. Hart teaches the label may further comprise at least one other layer such as an outer printed layer

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(i.e. the printed layer is attached/coupled to the metal layer). Hart teaches the label may cover at least 50% of the external surface area of the container, i.e. the label covers an area of the external surface less than the external surface area so that a remainder of the external surface area is exposed. Hart further teaches attaching the label to the external surface of the container using any suitable method such as an adhesive (Page 1, 10-13 and Page 2, lines 29-33, and Page 3, lines 1-6, 11-12, 15-23, and 28-30). It would have been obvious to one of ordinary skill in the art at the time the invention was made to attach the label taught by Hart to the external surface of the container using a conventional melt adhesive, i.e. the adhesive is melted to bond the label to the external surface of the container followed by cooling, as it was well known and convention in the art to attach a label to a plastic container using a melt adhesive as shown for example by Yamanaka and only the expected results would be achieved.

Regarding claim 17, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use an adhesive having a melt temperature lower than that of the plastic container to prevent the container from burning or deforming during bonding as doing so would have required nothing more than ordinary skill and routine experimentation.

The background of Yamanaka is directed to conventional methods of labeling an article. Yamanaka teaches a label comprising an inner layer of heat/melt bondable adhesive (i.e. polymeric material), a middle/base layer of metal foil, and an outer layer of printing (i.e. the printing is attached/coupled to the middle/base layer). Yamanaka teaches a pre-formed article such as a container made of plastics such as polypropylene and polyethylene, i.e. semi-permeable plastics. Yamanaka teaches an iron-on labeling process for applying the label to the pre-formed container comprising placing the label on the external surface of the pre-formed container and

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heating the label with an iron such that the heat from the iron melts the inner layer of the label and bonds the label to the container to form a labeled container upon cooling (Column 1, lines 15-60).

10. Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hart and Yamanaka as applied to claims 11, 12, 16, and 17 above, and further in view of the admitted prior art.

Hart and Yamanaka teach all of the limitations in claims 13-15 as applied above except for a specific teaching of all the different types of containers that may be labeled. It is noted Hart and Yamanaka suggest a label and method for labeling a filled container, e.g. filled with foodstuffs, and they are not limited to any particular container. It would have been obvious to one of ordinary skill in the art at the time the invention was made to label containers such as pharmaceutical bottles (plastic bottles), IV bags and food packages (plastic bags), etc. using the label and method taught by Hart as modified by Yamanaka as it was known in the art to label these types of containers as shown for example by the admitted prior art and only the expected results would be achieved.

The admitted prior art is directed to labeling containers wherein the containers include plastic bottles, pharmaceutical bottles, IV bags, food packages, etc. (Specification pages 1 and 2).

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11. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hart and Yamanaka as applied to claims 11, 12, 16, and 17 above, and further in view of Kelch et al. (U.S. Patent 6,042,930).

Hart and Yamanaka teach all of the limitations in claim 7 as applied above except for a specific teaching of using a base layer of metallized polyester. However, it is noted Hart is not limited to any particular base layer only that the base layer is formed of a gas impermeable material. It would have been obvious to one of ordinary skill in the art at the time the invention was made would to use as the base layer taught by Hart as modified by Yamanaka metallized polyester, i.e. Mylar, as this was a well known base layer material used in labels as shown for example by Kelch et al. and only the expected results would be achieved, i.e. the metallized polyester would give the label similar properties to that of a metal foil.

Kelch et al. are directed to heat-activated adhesive labels for use in labeling containers. Kelch et al. teach the base layer of labels may comprise oriented polyester such as Mylar (Column 2, lines 12-19 and 34-36 and Column 8, lines 21-22).

Response to Arguments

12. Applicant's arguments with respect to claims 1-7, 11-18, and 24-34 have been considered but are moot in view of the new ground(s) of rejection. The new rejections are made in view of applicants amendment to the claims requiring applying the label to a "pre-formed" container. Hart is cited to show labeling the external surface of a pre-formed container with a label having a metal base. It is noted that while Hart discloses an "injection blow moulded" container, Hart

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clearly teaches that the container is labeled after it is formed (Page 3, lines 1-3 and 28-30 and Claim 12).

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **John L. Goff** whose telephone number is **703-305-7481** (after December 2003 the telephone number will be 571-272-1216). The examiner can normally be reached on M-Th (8 - 5) and alternate Fridays.

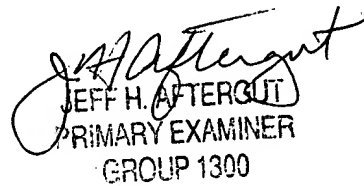
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on 703-308-3853. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



John L. Goff



JEFF H. AFTERGUT
PRIMARY EXAMINER
GROUP 1300